## DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

### Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

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SENSENY'S ADM'R *v.* BOYD'S ADM'R.

Nov. 21, 1912.

[76 S. E. 280.]

**Limitation of Actions (§§ 96, 100[4])—Accrual—Discovery of Fraud.**—No lapse of time and no delay in bringing a suit, however long, will defeat the remedy in case of fraud or mutual mistake, provided the injured party during such interval was ignorant of the fraud or mistake without fraud on his part, and the duty to commence proceedings can only arise upon discovery of the fraud or mistake.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. §§ 475, 476, 323, 430-493; Dec. Dig. §§ 96, 100.* 9 Va.-W. Va. Enc. Dig. 388.]

Appeal from Circuit Court, Frederick County.

Petition by Senseny's administrator against Boyd's administrator. From a decree for defendant, petitioner appeals. Affirmed.

*W. Roy Stephenson,* of Winchester, for appellant.
*R. T. Barton,* of Winchester, for appellee.

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McLIN et al. *v.* RICHMOND et al.

Nov. 21, 1912.

[76 S. E. 301.]

1. **Deeds (§ 114*)—Construction—Property Conveyed.**—A deed recited that whereas J. R. had that day conveyed to complainant an undivided interest in the land which descended to him from his mother, and where as some question had been raised about the title of the house and lot devised to J. R. and another by his father, whether title was in his father or his former wife, in consideration of the said conveyance complainant thereby relinquished to J. R. any rights that might be acquired under the said deed from him to the said lot and house. Held, that the deed did not convey or release to J. R. the entire property in the house and lot, but merely released that interest which complainant might otherwise have claimed under the deed from J. R. to him.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 316-322, 326-329, 388; Dec. Dig. § 114.* 4 Va.-W. Va. Enc. Dig. 427, et seq.]

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

**2. Frauds, Statute of (§ 129*)—Parol Gift of Land—Part Performance.**—To uphold title to realty under a parol gift, the agreement must be certain and definite and must have been so far executed that a refusal to fully execute would be a fraud upon the donee for which he could not be compensated, and the acts of part performance must result from the agreement, and a mere general and indefinite showing that donee went into possession of a lot and made valuable improvements thereon, using and claiming it for his own openly, notoriously, continuously, and adversely for 37 years, was not sufficiently definite to sustain a claim of a parol gift of the land, especially where his possession and acts of ownership might be referred to his marital rights as tenant by the curtesy.

[Ed. Note.—For other cases, see Frauds, Statute of, Cent. Dig. §§ 287-292, 303, 306-308, 311, 314, 318-320, 322, 325, 326; Dec. Dig. § 129.* 6 Va.-W. Va. Enc. Dig. 526, 530.]

**3. Lost Instruments (§ 23*)—Evidence.**—Proof of the existence, loss, and contents of an alleged lost deed should be strong and conclusive to permit title to be established by parol evidence.

[Ed. Note.—For other cases, see Lost Instruments, Cent. Dig. §§ 51-57; Dec. Dig. § 23.* 9 Va.-W. Va. Enc. Dig. 479.]

**4. Lost Instruments (§ 23*)—Sufficiency of Evidence.**—Evidence held not to show the execution and delivery of a deed during the lifetime of the alleged grantor, which is now claimed to be lost.

[Ed. Note.—For other cases, see Lost Instruments, Cent. Dig. §§ 51-57; Dec. Dig. § 23.* 9 Va.-W. Va. Enc. Dig. 479.]

Appeal from Circuit Court, Lee County.

Suit by R. J. McLin against J. S. B. Richmond and others. From a decrée for defendant named, complainant and a part of defendants appeal. Reversed.

*R. L. Pennington* and *C. T. Duncan,* both of Jonesville, for appellants.

*B. H. Sewell* and *J. W. Orr,* both of Jonesville, for appellees.

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CHESAPEAKE & O. RY. CO. *v.* McCARTHY.

Nov. 21, 1912.

[76 S. E. 319.]

**1. Appeal and Error (§ 882*)—Estoppel to Allege Error.**—A party, who has himself elicited the same evidence, cannot object to the admission of such evidence on behalf of the other party.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3591-3610; Dec. Dig. § 882.* 1 Va.-W. Va. Enc. Dig. 609.]

**2. Appeal and Error (§ 1050*)—Harmless Error—Admission of Evidence.**—In an action against a railroad company for injuries to a

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.